IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income Tax Appeal No. 300 of 2005
Date of decision: October 28 , 2006

M/s Jay Gases Pvt. Ltd.

v.

C.I.T., Leela Bhawan, Central Circle, Patiala

Present: Mr. S.K.Mukhi and Mr. Rakesh Bakshi, Advocates
for the appellant.
Mr. Yogesh Putney, Advocate for the respondent.

CORAM:
Hon'ble Mr.Justice K.S.Garewal
Hon'ble Mr. Justice Rajesh Bindal

Rajesh Bindal, J.

The assessee has approached this Court by filing the present appeal raising the following substantial questions of law, arising out of order dated 11.3.2005, passed by the Income-Tax Appellate Tribunal Chandigarh Bench `A' (for short,`the Tribunal'), in I.T.A. No.551/CHANDI/2001 for the assessment year 1997-98:

> "(A) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts & in law in reversing the action of C.I.T. (A) and thereby sustaining the addition to the extent of Rs. 4.72 lacs by erroneously adopting the average consumption of electricity at 13.5 units per cylinder as against 14 units as adopted by the appellant and as confirmed by the CIT (A)?
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> (B) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified on facts & in law in reversing the orders of CIT(A) and thereby confirming the addition to the extent of Rs. 4.72 lacs as made by the A.O. by failing to appreciate the fact that the ITAT itself has in earlier years accepted the similar explanations of the appellant on the similar dispute of variation in the consumption of electricity units which was not disputed by the department before the Hon'ble High Court which in clear defiance of law of the land as laid down by the Hon'ble Supreme Court in the case of BERGER PAINTS INDIA LIMITED V/S CIT, 262 ITR 99 (SC)?
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> (C)Whether on the facts and in the circumstances of the case the

findings of the Income Tax Appellate Tribunal in rejecting the appeal of the appellant are wrong and perverse ?"

The assessee is engaged in the manufacture and sale of oxygen gas cylinder for industrial use. Return for the assessment year in question was filed on 21.11.1997, showing taxable income of Rs. 13,49,305/-, which was processed under Section 143(1)(a) of the Income-tax Act, 1961 (for short, `the Act') on the returned income on 23.10.1998. Thereafter, notices under Sections 143(2) and 142 (1) of the Act were issued for regular assessment. On scrutiny of the accounts, the Assessing Officer found that the assessee had shown the receipt of Rs. 76.91 lacs on account of manufacture and sale of cylinder. On the other hand, Rs. 73,24,457/- were claimed as expenditure on electricity, which was evidently quite on higher side. Besides this, on a perusal of the profit and loss account, it was evident that under the head "Other Income", Rs. 14.16 lacs, Rs. 8.84 lacs and Rs. 10,800/- were shown as income on account of cylinders rent, income tax refund and income tax interest, respectively. Apart from this, a sum of Rs. 39,55,000/- was shown under the head "income surrendered". However, on being asked as to the nature of the surrendered income and from where the same had been earned, though the assessee did not furnish any detailed information but submitted that the same had been earned from the same business. As regards excessive use of electricity, which had risen sharply during the year, the explanation was that the same was because of defective meter. To examine the case in detail, month-wise detail of production and electricity consumption was called for. On a comparison thereof, it was found that consumption of power ranged from average of 5.94 units to 43.67 units for manufacture of a cylinder. The explanation of the assessee to this patent discrepancy was that electricity consumption in their case was not reliable due to the fact that the meter was defective and was running slowly, which fact was even brought to the notice of the Electricity Department in March, 1996 itself. The plea was raised without even realising the effect thereof. Even with slow running of meter, the consumption of electricity was patently quite on higher side. The slow

running of meter was further fortified by special order dated 13.12.1996 passed by the Punjab State Electricity Board, when it was found that the meter installed on 28.8.1996 was found to be running 44.36% slower, as a result thereof for the period from 28.8.1996 to 12.11.1996, additional energy bill of Rs. 10,57,734/- was raised against the assessee, which was deposited by the assessee without any dispute. Finding these discrepancies and the admission made by the assessee to the extent that the books of accounts do not reflect correct position, in exercise of power under Section 145 of the Act, the Assessing Officer rejected the books of accounts as not reflecting the true and correct state of affairs and accordingly proceeded to estimate the income on the basis of material on record. Besides power consumption, when other discrepancies were pointed out to the assessee, the assessee even offered to surrender a sum of Rs. 4 lacs as additional income. As the offer was not justifiable vis-a-vis the material on record, showing the concealment of income, the same was not accepted for various reasons mentioned by the Assessing Officer in his order and finally the income was assessed at Rs. 27,45,294/- as against the returned income of Rs. 13,49,305/-.

In appeal, the Commissioner of Income-tax (Appeals), Patiala [for short, `the CIT (A)'] accepted the plea of the assessee and restricted the additions to Rs. 76,577/- over and above the declared income.

The Revenue, being dissatisfied, approached the Tribunal. The Tribunal, while holding that the view expressed by the CIT (A) accepting the appeal of the assessee was without any basis, proceeded to assess the concealed income and finally addition of Rs. 4,72,344/- was upheld, as against Rs. 76,577/- sustained by the CIT (A). It is this order of the Tribunal, which is under appeal by the assessee.

In the above factual matrix, we have heard learned counsel for the parties and perused the record.

At the very out-set, it is evident that the conduct of the assessee is

contumacious. Firstly, the assessee declared the income of Rs. 39.55 lacs as surrendered income in the return without giving any basis or the information from which source the income was earned. Secondly, when the case was examined in detail, the assessee admitted before the Assessing Officer that books of accounts maintained by him do not reflect true state of affairs and accordingly, the books of accounts maintained by the assessee were also rejected and the Assessing Officer proceeded to estimate the income on the basis of material on record. Still further, when the adverse material was confronted to the assessee, he even offered to surrender additional amount of Rs. 4 lacs as concealed income, which was not accepted by the Assessing Officer for the reasons that the material on record was showing concealment of income much more than Rs. 4 lacs offered for taxation by the assessee. In the assessment, the Assessing Officer determined the concealed income at Rs. 13,45,989/- in addition to the returned income and the same was assessed accordingly. Finding that the CIT (A) had reduced the concealed income from Rs. 13,45,989/- to merely Rs. 76,577/- without any basis, the Tribunal set aside the order of the CIT (A) and while assessing the concealed income itself, determined the same at Rs. 4,72,344/-. The view expressed by the Tribunal, being a possible view, and the determination of income in the present case, being on estimate basis, by taking the consumption of electricity on comparative basis, we are of the opinion that merely because according to the assessee, some other estimation is also possible by applying a different formula or taking the consumption of electricity per cyliner at 14 units as against 13.5 units, the same would not fall within the four corners of being a substantial question of law.

Accordingly, finding no merit, the appeal is dismissed.

(Rajesh Bindal)
Judge

(K. S. Garewal)
Judge

October 28 , 2006
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